

## SCHEDULES

### SCHEDULE 2

Section 4(4).

#### Investigation under section 4(4)

##### *Interpretation*

1. In this Schedule any reference to an investigation is a reference to an investigation in relation to which the Commissioner has made a determination under section 4(4).

##### *Conduct of investigation*

2.—(1) In determining whether to conduct or discontinue an investigation, the Commissioner may act in accordance with the Commissioner's own discretion.

(2) Where the Commissioner determines under section 4(4) to conduct an investigation the Commissioner must—

- (a) produce terms of reference for the investigation;
- (b) send notice of the proposed investigation and a copy of the terms of reference to any relevant authority concerned and such other bodies or persons as the Commissioner thinks fit; and
- (c) afford to every such authority an opportunity to comment on the matter being investigated and to give oral or other evidence respecting those matters.

(3) An investigation must be conducted in private.

(4) Except as otherwise provided by this Act, the procedure for conducting an investigation is such as the Commissioner considers appropriate in the circumstances of the case; and, in particular, it is for the Commissioner to determine whether any person may be represented by counsel or solicitor or otherwise in the investigation.

(5) The Commissioner may for the purposes of an investigation obtain information from such persons and in such manner, and make such enquiries, as the Commissioner thinks fit.

(6) Subject to sub-paragraph (7), in conducting an investigation the Commissioner is not obliged to hold any hearing, and no person is entitled as of right to be heard by the Commissioner.

(7) If at any time during the course of an investigation it appears to the Commissioner that there may be grounds for making any report or recommendation that may adversely affect any relevant authority or person, the Commissioner must afford to that authority or person—

- (a) an opportunity to give oral or other evidence; and
- (b) an opportunity of testing by cross-examination any evidence which may affect that authority or person.

(8) The Commissioner may, if the Commissioner thinks fit, pay to any person who attends or supplies information for the purposes of a formal investigation—

- (a) sums in respect of expenses properly incurred by that person;
  - (b) allowances by way of compensation for the loss of that person's time,
- in accordance with such scales and subject to such conditions as the Office may determine.

(9) An investigation does not affect—

- (a) any action taken by a relevant authority or by any department or Minister with respect to that authority; or
- (b) any power or duty of that authority, department or Minister to take further action with respect to any matters subject to the investigation.

#### *Report on investigation*

**3.—**(1) Where the Commissioner has conducted an investigation pursuant to a determination under section 4(4), the Commissioner must prepare a report on the outcome of the investigation and send it to—

- (a) any relevant authority concerned and, where the report contains recommendations as to action to be taken by any other relevant authority, that relevant authority; and
- (b) such other bodies or persons as the Commissioner thinks appropriate.

(2) Apart from identifying any relevant authority concerned, a report under this paragraph must not—

- (a) mention the name of any person; or
- (b) contain any particulars which, in the Commissioner's opinion, are likely to identify any person and can be omitted without impairing the effectiveness of the report,

unless the Commissioner determines that it is necessary to do so (whether for the purposes of sub-paragraph (3) or otherwise).

(3) A report under this paragraph may include recommendations as to action to be taken by a relevant authority mentioned in the report; and any such

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recommendations must be accompanied by the Commissioner's reasons for making them.

(4) Where a report contains a recommendation as to action to be taken by a relevant authority, the authority must—

- (a) consider the recommendation; and
- (b) determine what action (if any) to take in response to the recommendation.

*Further action following report on investigation*

4.—(1) Where the Commissioner has made a report under paragraph 3 which contains a recommendation in respect of a relevant authority, the Commissioner may by notice require that authority to provide the Commissioner within 3 months of the date of the notice with—

- (a) such information as will enable the Commissioner to determine whether the authority has complied with the recommendation or will be complying with it; or
- (b) a statement of the authority's reason for not complying with the recommendation.

(2) A notice under sub-paragraph (1) must include a statement that a failure by the authority to respond within the period mentioned in that sub-paragraph may be published in such manner as the Commissioner considers appropriate.

(3) If, on receipt of a response from the authority, the Commissioner considers that—

- (a) the action taken or proposed to be taken by the authority to comply with the recommendation is inadequate; or
- (b) the authority's reason for not complying with the recommendation is inadequate,

the Commissioner may send to the authority concerned a further notice setting out the inadequacy and requiring the authority to reconsider the matter and respond within one month of the date of the notice.

(4) A notice under sub-paragraph (3) must include a statement that a failure by the authority—

- (a) to provide what the Commissioner considers to be a satisfactory response; or
- (b) to provide any response within the period mentioned in that sub-paragraph,

may be published in such manner as the Commissioner considers appropriate.

(5) The Commissioner must include in the register maintained under section 16(5) details of—

- (a) recommendations (together with the reasons for them) contained in reports made under paragraph 3;
- (b) action taken by the Commissioner under sub-paragraphs (1) and (3); and
- (c) the results of any such action.